IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 101 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
BUDHABHAI P PARMAR & 3 - Defendant(s)

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Appearance :
MR AP MEDH for Appellant(s) : 1,
MR VM TRIVEDI for Defendant(s) : 1 - 2.
MR RR SHAH for Defendant(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/06/2007

ORAL JUDGMENT

1. The Insurance Company, being aggrieved by the impugned Award dtd.16/7/1983 passed by the Motor

Accident Claims Tribunal, Surendranagar in Motor Accident Claim Petition No.292 of 1982, is before this court with a submission that the learned tribunal was unjustified in holding the responsibility of the appellant Insurance Company.

2. Short facts necessary for disposal of the present appeal are that the deceased Ramabhai Budhabhai was working as a labourer with the respondent No.4, he was aged about 21 years, he was taken in a trailer which was mounted with a tanker for fetching water from the Government tube-well. The claimant said that the driver lost the control over the steering, as a result of which, the trailer separated from the tractor and turtled down, the deceased fell from the trailer and was crushed under the tanker. The Insurance Company, however, submitted that they were not liable. The department and the driver also submitted that the deceased was carried in the vehicle during the course of his employment and under the circumstances, if their liability is held, the Insurance Company would be liable.

3. Mr.A.P. Medh, learned counsel for the appellant, after taking me through the evidence submitted that the labour was sitting on mudguard of the tractor and

sensing or apprehending an accident, jumped from the tractor and thereafter, the tanker fell upon him. When the Court asked him that moment the labour jumped on the earth and thereafter the tanker fell upon him, then, why such labour could not be treated to be a third party, realising an order against the interest of the Insurance Company, Mr.Medh, learned counsel for the appellant submitted that the story of jump be disbelieved but the further story that the labour was sitting on the mudguard should be relied upon.

4. So far as this defence raised by the learned counsel for the appellant is concerned, would not be available to them. Assuming such a defence is available to them, then, there were required to examine some witnesses to prove the facts. The facts floating on the surface of the records are that a trailer mounted with a tanker was attached to a tractor, two labourers during the course of their employment were asked to sit in the trailer and all of them were required to fetch water. The evidence further shows that the driver lost his control and the tanker turtled down, as a result of which, the deceased was crushed under the tanker. In case like such, the Insurance Company cannot say that they were not liable.

If I accept the defence of the Insurance Company that the labour jumped and thereafter was crushed, then, such person would be a third party and the Insurance Company would liable. If the stand taken by the claimant is accepted that as a result of the accident, the trailer mounted with the tanker turtled down, which resulted into death of the deceased, then, again the Insurance Company would be liable.

5. I find no reason to interfere. The appeal deserves to and is accordingly dismissed. No costs.

(R.S. GARG, J.)

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